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DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

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MAY 27 2004

In re Application of
Moshe Tamir, et al.
Application No. 09/728,613
Filed: November 30, 2000
Attorney Docket No. 2315/0H316

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ON PETITION

OFFICE OF PETITIONS

This is a decision on the petition, filed May 18, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed September 3, 2003, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. A Notice of Abandonment was mailed on April 19, 2004. On May 18, 2004, an amendment, petition for extension of time and the present petition were filed.

Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Therefore, no extension of time fees are due on a petition for revival. In view thereof, the extension of time fee submitted with the petition is unnecessary and will be refunded to petitioner's deposit account as authorized.

The petition is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9220. All other inquiries regarding this application should be directed to the Technology Center.

The application file is being forwarded to Technology Center AU 2173 for consideration of the amendment filed May 18, 2004.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy